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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,265	05/04/2007	Volker Bodecker	MED5001	6589
27777	7590	07/09/2008	EXAMINER	
PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003			STOUT, MICHAEL C	
		ART UNIT	PAPER NUMBER	
		3736		
		NOTIFICATION DATE		DELIVERY MODE
		07/09/2008		ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

[jnjuspatent@corus.jnj.com](mailto:jnjuspatent@corus.jnj.com)

<b>Office Action Summary</b>	<b>Application No.</b> 10/579,265	<b>Applicant(s)</b> BODECKER ET AL.
	<b>Examiner</b> MICHAEL C. STOUT	<b>Art Unit</b> 3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 09 May 2008.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-6 and 8-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-6 and 8-17 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1668)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

### **DETAILED ACTION**

This detailed action is in regards to United States Patent Application 10/579265 filed on May 9, 2008 and is a FINAL-ACTION based on the merits of the application.

#### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

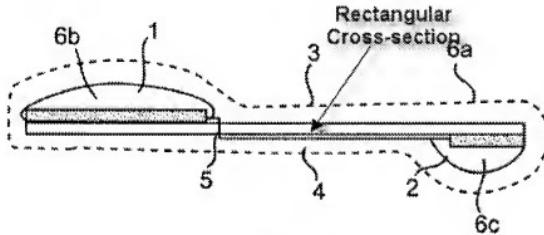
Art Unit: 3736

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

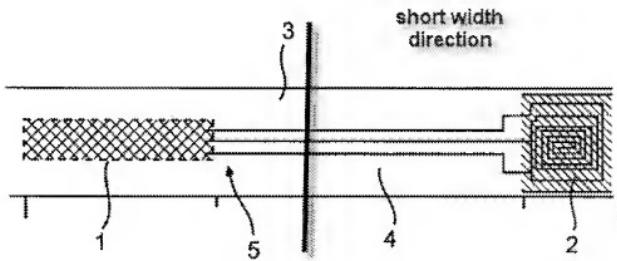
4. Claims 1, 3-6, 8-14, and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brehmeier-Flick et al. (US 6083174) in view of Jeffries et al. (US 6193656).

Regarding **claim 1** Brehmeier-Flick discloses an implant comprising a sensor device (sensor element 1, see Column 4, Line 19) being fixedly connected to a first end of a longitudinal carrier (flexible foil 3, see Column 4, Line 20 and Figure 1); and an inductive coil (telemetry unit 2, see Column 4, Line 22) connected to the sensor device via electrical connection lines (strip conductors 4, see Column 4, Line 20) that are arranged on the longitudinal carrier; a covering encapsulating the sensor device (layer 6b, See Column 4, Line 39), the carrier with the connection lines (layer 6a, See Column 4, Line 37), and the coil (6c, See Column 4, Line 39); wherein the carrier has a sufficient rigidity such that the sensor device is adapted to be guided by the carrier during implantation to a target position and held in position at the target position (the flexible foil 3 is easy to implant because it can be slid under the skin without twisting or being moved in an undesirable direction, see Column 4, Lines 24-27) wherein the carrier is flat with a rectangular cross-section, (Figure 2 shows the flexible foil 3 which a sensor and telemetry unit 2 arranged thereon along with strip conductors, the sensor and telemetry unit each have a protective layer of 6b and 6c respectively, Figure 2 which is a cross -section view of the implant in Figure 1 shows the foil having a rectangular cross

section see Figure 2, and furthermore Figures 1 and 2 combined show a foil 3 comprising a rectangular cross section along the shortest width dimension shown in Figure 1).



**FIG. 2**



**FIG. 1**

Brehmeier-Flick fails to disclose a device wherein the covering part has means for subcutaneous fastening. Jeffries teaches an implant comprising a covering part (housing 500, see Figures 5-8) having a means for subcutaneous fastening (eyelets 502 and 504, see Figure 5).

Both Brehmeier-Flick and Jeffries teach implant devices. Thus, it would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the device disclosed by Brehmeier-Flick to include have a means for subcutaneous fastening as taught by Jeffries in order to connect the sensor to a site in the body, see Jeffries Column 2, Lines 25-33.

Regarding **claim 3**, Brehmeier-Flick further discloses a device wherein there are provided two connection lines between the coil and the sensor device (see Figure 1).

Regarding **claim 4**, Brehmeier-Flick further discloses a device wherein the carrier is flat (see Figure 2).

Regarding **claims 5-6**, Brehmeier-Flick further teaches a device further comprising a stiffening foil being provided in the covering part (the flexible foil while being the carrier also provides stiffening for successful implantation, see Column 4, Lines 24-27) and the carrier is formed as a foil (flexible foil 3).

Regarding **claim 8 and 9**, Brehmeier-Flick further discloses a device wherein a frame formed in one piece with the carrier (area of the carrier immediately surrounding the sensor, see Figure 1) is fastened at the first end of the carrier, the sensor device positively fits within the frame (the sensor device fits within the frame area of the carrier, see Figure 1).

Regarding **claim 10**, Brehmeier-Flick further discloses a device wherein the carrier is formed as a common carrier (all of the components are arranged on the flexible foil 3, see Column 4 Lines 19-21 and Figure 2) for the electrical connection lines and the coil windings.

Regarding **claim 11**, Brehmeier-Flick further discloses a device wherein the sensor device comprises at least one pressure sensor (see Column 4, Lines 7-18).

Regarding **claims 12, 13, 14 and 17**, Brehmeier-Flick further discloses a device wherein the covering part encapsulating the coil is adapted to be arranged in an interior of the brain, (the covering part 6a is made of silicone, a pressure transmitting medium, Column 4 Lines 32-39) and is equipped with a pressure capable of providing at least one of an intraparenchymal and intraventricular pressure measurements once positioned in an interior of the brain, see also Column 1, Lines 39-56.

Regarding **claim 16** Brehmeier-Flick further discloses a device wherein the covering part encapsulating the coil is adapted to be arranged in the epidural (the covering part 6a is made of silicone, a biocompatible material, see Column 4, Lines 32-39 and Column 1, Lines 39-56).

5. Claims 2 and 15 rejected under 35 U.S.C. 103(a) as being unpatentable over Brehmeier-Flick in view of Jeffries as applied to claim 1 above, and further in view of Ko et al. US 4,519,401.

Brehmeier-Flick/Jeffries teaches the device implant according to claim 1 as set forth above, wherein the carrier (flexible film) is capable of bending has a fluid interface end (sensor end) and a telemetry end. Brehmeier-Flick fails to teach the angles at which the device can flex when implanted, such as the device wherein the carrier is arranged at an angle less than 180° (60°-120°), relative to the plane, in which the coil windings of the inductive coil are arranged.

Ko teaches a pressure sensing implant for measuring ventricle pressure wherein the fluid interface end(catheter 18, Figure 1) is arranged at an angle of around 80° relative to the plane in which the inductive windings of the coil (telemeter 10) are arranged, see Figure 1.

Both Brehmeier-Flick and Ko teach brain pressure sensing implants. Thus, it would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the implant as taught by Brehmeier-Flick to include the ability to measure ventricular pressure as taught by Ko and achieve a device wherein the pressure sensing fluid interface end of the carrier is arranged at an angle between 120° and 60° relative to the plane, in which the coil windings of the inductive coil are arranged, in order to measure ventricular pressure and provide the best operation of the telemetry unit, see Ko Column 1, Lines 17-41 and Brehmeier-Flick Column 3, Lines 12-14.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Response to Arguments***

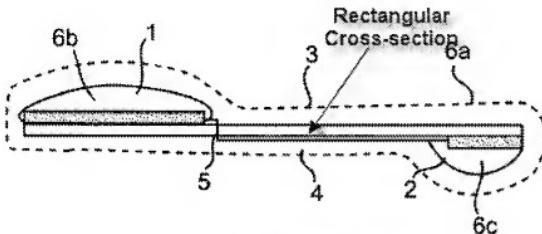
The Applicant's amendment(s), see Claims, filed 5/09/2008, with respect to claim 1 overcome the previous objection to the claims. The objection of claims 1-17 have been withdrawn.

Applicant's arguments filed 5/09/2008 have been fully considered but they are not persuasive.

The Applicant argues that Brehmeier-Flick fails to disclose a foil having a rectangular cross section.

The Examiner disagrees.

Brehmeier-Flick in Figure 2 shows the flexible foil 3 having a sensor and telemetry unit 2 arranged thereon along with strip conducts, the sensor and telemetry unit each have a protective layer of 6b and 6c respectively, Figure 2 which is a cross - section view of the implant in Figure 1 shows the foil having a rectangular cross section see Figure 2, and furthermore Figures 1 and 2 combined show a foil 3 comprising a rectangular cross section along the shortest with dimension shown in Figure 1.



**FIG. 2**

**Contact Info**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL C. STOUT whose telephone number is (571)270-5045. The examiner can normally be reached on M-F 7:30-5:00 Alternate (Fridays).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. C. S./  
Examiner, Art Unit 3736

/Max Hindenburg/  
Supervisory Patent Examiner, Art Unit 3736